



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

file

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 18 2001

Marina Associates
c/o Ashley N. Bailey, Esq
Ropes & Gray
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, D.C., 20005-3333

RE. MUR 5020

Dear Ms. Bailey:

On June 5, 2000, the Federal Election Commission notified your client, Marina Associates, of a complaint alleging violations of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Subsequently, a copy of the complaint was forwarded to you

Upon further review of the allegations contained in the complaint, and information supplied by you on behalf of Marina Associates, the Commission, on October 3, 2001, found that there is reason to believe that Marina Associates violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

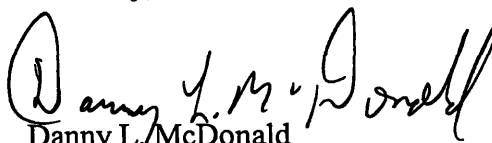
You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Marina Associates

MUR: 5020

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Audrey Michael. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Complaint

The complaint alleges that Harrah's Entertainment, Inc. ("Harrah's") executives, acting on behalf of the corporation, collected \$31,000 in contributions from employees of Harrah's subsidiaries and forwarded the contributions to the Gormley Committee.

B. Response

While David Jonas ("Jonas"), general manager of Marina Associates, did not respond to the complaint, a July 20, 2000 collective response from various respondents mention his activities regarding the Gormley Committee. The response asserts that, in March 2000, after personal requests for support from the Gormley Committee, Jonas "told certain business colleagues that they planned to contribute to the Gormley Committee, and invited various colleagues to do the same." The response adds that Jonas acted in his individual capacity, and not on behalf of, or at the behest of, the business he manages. The response also states that a number of personal contribution checks were delivered to Jonas' office, and Gormley Committee representatives picked up the checks

Regarding the reporting of these checks, the response acknowledges that Jonas should have filed a conduit report, and provided the report as an attachment.

C. Applicable Law

Under the Act, a corporation may not make “a contribution or an expenditure in connection with any election for federal office.” 2 U.S.C. § 441b(a). An officer or director of any corporation may not consent to any such contribution. *Id.* As used in Section 441b, the term “contribution” includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with a Federal election. 2 U.S.C. § 441b(b)(2).

To effectuate this prohibition, corporations (including officers, directors or other representatives acting as agents of corporations) are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations. 11 C.F.R. § 114.2(f). “Facilitation means using corporate . . . resources or facilities to engage in fundraising activities in connection with any Federal election.” *See also* 11 C.F.R. § 114.2(a)(2) (extending provisions of Part 114 of Title 11, Code of Federal Regulations, to activities of national banks in connection with Federal, state, and local elections)

Examples of facilitating the making of contributions include, but are not limited to, fundraising activities by corporations that involve:

- officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as a part of their work

responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services;

- failure to reimburse a corporation within a commercially reasonable time for the use by persons, other than corporate shareholders or employees engaged in individual volunteer activity, of corporate facilities described in 11 C.F.R. § 114.9(d) (i.e., facilities such as telephones, typewriters or office furniture);
- using a corporate list of customers, clients, vendors, or others not in the restricted class to solicit contributions in connection with a fund-raiser, unless the corporation receives advance payment for the fair market value of the list;
- using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or
- providing catering or other food services, unless the corporation receives advance payment for the fair market value of the services. 11 C.F.R. § 114.2(f)(2)(i). Other examples of prohibited facilitation include providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee (other than the corporation's own separate segregated fund), or providing similar items which would assist in transmitting contributions, 11 C.F.R. § 114.2(f)(2)(ii), and collecting and forwarding contributions *See, e.g.* MUR 3672

Facilitation activities may also involve “[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee ” 11 C.F.R. § 114.2(f)(2)(iv)

Exceptions to the general prohibition against corporate facilitation of contributions include the “[s]oliciting of contributions to be sent directly to candidates if the solicitation is directed to the [corporation’s] restricted class. . . .” 11 C.F.R. § 114.2(f)(4)(ii). Pursuant to 11 C.F.R. § 114.1(a)(2)(i), such a restricted class includes a corporation’s “stockholders and executive and administrative personnel and their families,” with whom a corporation may communicate on any subject. *See also* 11 C.F.R. § 114.3.

D. Analysis

The information currently available, based on a review of news items, conduit reports, the complaint and responses, raises concerns that Jonas, acting on behalf of Marina Associates and Harrah’s, may have been involved in a corporate activity to facilitate the making of contributions to the Gormley Committee in two respects. First, the information available suggests that Jonas and others established a uniform effort to obtain contribution checks from employees. Within this scenario, it appears that the corporation established: (1) the time period for collecting the contributions (the last two weeks in March 2000); (2) where the contributors would submit their checks (the manager’s office suite); and (3) when the Gormley representative would pick up contribution checks (possibly March 29, 2000). The striking similarities between Jonas’ mode of obtaining contributions and that of other corporate executives appear to be more than mere coincidence.

Jonas’ actions appear to demonstrate a uniform corporate effort on behalf of Marina Associates and the Harrah’s corporation to facilitate the making of contributions for the Gormley Committee based on three factors. First, the conduit report filed appears

to indicate that Jonas limited the scope of obtaining contributions almost entirely to employees within Harrah's, either from Harrah's Eastern Operations Division, or subsidiaries. It appears that all but one of the 53 contributions he collected for the Gormley Committee were attributable to Harrah's employees or subsidiaries.¹ Given that he collected 52 of 53 contributions from Harrah's employees or subsidiaries, it seems likely that his activities may have been corporate in nature. Additional information reveals that another executive employed at Atlantic City Showboat, Inc, a subsidiary of Harrah's, collected only contributions (seventeen in all) from employees of that subsidiary.² Given that these executives collected 69 of 70 contributions from Harrah's employees or subsidiaries, it seems likely that their activities may have been corporate in nature.

It also appears that Jonas may have solicited contributions from employees of Harrah's Entertainment Inc. or its subsidiaries that may not fall within the restricted class. The following managers listed in Jonas' conduit report may supervise non-salary employees: William Ambrosio (Games Shift Manager); Michael Booker (Slot Shift Manager); Christine Boxer (Slot Shift); Anthony Ciallella (Games Shift); Glen Cunningham (Games Shift); Kimberly Grahslar (Volume Restaurant); Mark Kashuda (Slot Shift); Paul Merrick (Stage), John Ranere (Credit); Charlie Sanderson (Slot Performance), and Mark Starrett (Player Services).

¹ Mr. Jonas received 47 contributions from employees of Marina Associates, five (5) from employees of Harrah's Eastern Operations Division, and one (1) from an employee of Tropicana Casino and Entertainment Resort. Although the Jonas conduit report discloses Louis Paludi's occupation as a self-employed consultant, this Office has included him among the Harrah's Eastern Operations Division contributors given that the Gormley Committee's 2000 April Quarterly Report identifies him as a Harrah's executive.

² This information was obtained from a conduit report submitted by another executive associated with Harrah's as an attachment to their July 20, 2000 response to the complaint.

Ross O'Hanley, who is employed as the President's Associate, may or may not have the requisite supervisory responsibilities to be part of the restricted class.

Second, the manner in which Jonas collected these contributions also seem to demonstrate an overall corporate effort. His actions appear to be part of a plan where he directed employees to deliver contribution checks to their respective office suites within the last two weeks of March 2000. Based on currently available information, it appears that all 53 contributions listed in his conduit report were delivered to his office suite.

Finally, Jonas' statements also appear to demonstrate a plan within Harrah's corporate structure of forwarding the contributions to the Gormley Committee. Jonas and others note that a representative of the Gormley Committee picked up the checks at the end of March 2000; Jonas states that the representative picked up the checks on March 29, 2000, while others state that the pick-up for his collected contributions occurred on or about March 30, 2000. The fact that Jonas and others forwarded their collected contribution checks to the Gormley Committee during the same time period may suggest an organized effort on Harrah's part to facilitate the making of contributions for the benefit of the Gormley campaign by setting a time period for the pick-up of contribution checks.

III. CONCLUSION

Accordingly, there is reason to believe that Marina Associates³ violated 2 U.S.C. 441b(a).

³ Currently available information suggests that Marina Associates' two managing partners are incorporated 1) Harrah's Atlantic City Inc , and 2) Harrah's New Jersey Inc Under 11 C F R § 110 1(e), a contribution by a partnership shall be attributed to both the partnership and to each partner in proportion to the partner's share of the profits The regulation also provides that no portion of a partnership contribution may be made from the profits of a corporation that is a partner Therefore, it appears that corporate facilitation on Marina Associates' part could constitute an in-direct corporate contribution